

RULE 117. DEFAULT

Rule 55 shall govern practice regarding defaults and default judgments, except that no default or default judgment shall be entered by the clerk. No default judgment shall be entered in an action for divorce, child support, spousal support, counsel fees, division of marital or non-marital property, paternity, parentage or parental rights and responsibilities, or motions for post-judgment relief, without all parties being given notice and opportunity to appear and be heard before entry of judgment. Notice of hearing is not required prior to entry of a default judgment where the court finds that the party, although properly served with the complaint, petition or motion for post-judgment relief, has not entered an appearance and/or otherwise participated in proceedings before the judgment.

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Rule 117 indicates that procedures regarding defaults and default judgments are generally governed by Rule 55. However, Family Division cases do not lend themselves to the clerk entered defaults or default judgments authorized by Rule 55(b)(1). For similar reasons, post-judgment motions under Rule 120 do not lend themselves to a waiver of objections as authorized by Rule 7(c)(3).

The text of Rule 117 also reflects the spirit of Rule 80(f) that parties should have notice of final hearings and the pendency of final judgments in Family Division actions. Thus, the rule requires that no default judgment shall be entered in actions for divorce, child support, spousal support, paternity, parentage or parental rights and responsibilities without all parties being given notice and an opportunity to appear and be heard before entry of judgment. To avoid ambiguity that is often inherent in summons and notices regarding preliminary proceedings in divorce cases where parties who do not contest the ultimate result—the divorce—and thus do not respond indicating such a contest, the summons and notices must be changed to reflect all consequences of not participating in the proceedings.

The proposed rule does allow the court to waive notice to properly served parties who have not entered any appearance and not otherwise participated in the proceedings before the hearing and judgment. The summons must be redrafted to reflect all consequences of a failure to respond or enter an appearance.